

The Hon. Judge Timothy W. Dore

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

In re:

SAITO, KANA J,

Debtor(s).

Bankruptcy Case No. 20-12611-TWD

**COMPLAINT TO DETERMINE
DISCHARGEABILITY OF
CLAIM AND INDEBTEDNESS**

SUNSTONE SANTA INVESTMENT
GROUP, LLC,

Plaintiff,

v.

KANA SAITO,

Defendant.

Plaintiff, by and through their undersigned attorneys of record, for their Complaint to Determine Dischargeability of Indebtedness pursuant to 11 USC 523, against Defendant, allege as follows:

I. PARTIES

1.1 Sunstone Santa Investment Group, LLC ("Sunstone") is a Washington limited liability company that did business in King County. Sunstone is a creditor and claimant against defendant Kana Saito ("Saito").

COMPLAINT TO DETERMINE
DISCHARGEABILITY OF CLAIM AND
INDEBTEDNESS -1-

OSERAN HAHN, P.S.
SUITE #1200, 929 108th Ave NE
BELLEVUE, WASHINGTON 98004
425-455-3900; Facsimile 425-455-9201

1 1.2 Kana Saito resides in King County Washington, which is located in the
2 Western District of Washington.

3 **II. JURISDICTION AND VENUE**

4 2.1 Saito is a debtor in this Chapter 7 bankruptcy proceeding. Sunstone is listed
5 as a creditor in Debtor's Schedule F, 4.7 with a claim amount of \$269,000. Debtor has not
6 received a discharge.
7

8 2.2 This is an adversary proceeding objecting to the dischargeability of the debt
9 owed by Saito to Sunstone, brought under 11 USC 523 and Federal Rules of Bankruptcy
10 Procedure 4007 and 7001(6).

11 2.3 This Court has jurisdiction over this matter pursuant to 28 USC 157(b)(2)(I)
12 and 28 USC 1334. Venue is proper pursuant to 28 USC 1409(a).
13

14 **III. FACTS**

15 3.1 This proceeding arises out of Saito's fraudulent behavior in connection with
16 the sale of a business, Sea-An, LLC to Sunstone. Defendant was both an owner/seller of
17 Sunstone, and also a licensed real estate agent who represented Sunstone as its broker. Saito's
18 fraudulent behavior resulted in Sunstone paying \$269,000 for a business based on material
19 omissions and misrepresentations of Saito, hiring her to manage operations of the business at
20 a material loss, and then allowing her to retain a position where she misused company funds
21 for her personal enrichment. Sunstone seeks judgment determining that Saito's debts to
22 Sunstone be nondischargeable.
23

24 3.2 The allegations herein formed the basis of a prepetition action against Saito by
25 Sunstone in the King County Superior Court, cause number 19-2-13474-7 SEA.

1 3.3 Saito has filed and been dismissed from two previous bankruptcy actions, Case
2 numbers 20-12104-TWD, and matter 20-11354-TWD.

3 3.4 Saito was a licensed real estate agent who represented Sunstone with regards to
4 the purchase of a business called Sea-An, LLC doing business as the Crescendo Dance
5 Academy (“Dance Academy”).
6

7 3.5 Saito withheld information from Sunstone regarding her conflict of interest and
8 financial and contractual information regarding the Dance Academy that she was required to
9 provide as the seller. Saito ignored her statutory and/or fiduciary duties as Sunstone’s agent
10 in order to induce Sunstone to purchase the business. The details of such conduct are alleged
11 in the filings in King County Superior Court, cause number 19-2-13474-7 SEA. A copy of
12 the Amended Complaint filed in the underlying state court action is attached hereto and the
13 allegations therein are hereby incorporated by reference.
14

15 3.6 Saito withheld information regarding the Dance Academy’s lease, which was
16 to a landlord that Saito had a familial relationship with – causing Sunstone’s rent to double.

17 3.7 Saito took a commission from the sale of Sea-An, LLC despite her conflict of
18 interest and failure to represent the interests of her client, Sunstone.

19 3.8 After the sale, Saito withheld information regarding the Dance Academy’s
20 bank accounts, which she still controlled after the sale. This allowed her to use corporate
21 funds for matters that were not part of the Dance Academy’s business, and she enriched
22 and/or embezzled such funds for her own benefit. Sunstone was not aware that the previous
23 business’s account was still in use for over a year and a half.
24
25

1 3.9 Saito misled Sunstone regarding the bank account and other information
2 regarding the business, like the existence of a separate commercial lease, which she had
3 personally guaranteed. Saito never disclosed the existence of the commercial lease in the
4 name of Sea-An, LLC to Sunstone, and Sunstone only discovered it when the landlord sent a
5 notice to pay or vacate to Sunstone in December 2018. On information and belief, Saito did
6 not disclose this separate lease to Sunstone because it had no value to the Dance Academy,
7 and she had personally guaranteed it.
8

9 **IV. CAUSE OF ACTION**

10 **MONEY OBTAINED BY FALSE PRETENSES, FALSE REPRESENTATIONS AND**
11 **FRAUD. 11 USC 523(a)(2)(A)**

12 4.1 Plaintiff restates and realleges the above allegations as if fully stated herein.
13

14 4.2 Pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, a debtor will not be
15 discharged for debts obtained by false pretenses, false representations or actual fraud.

16 4.3 The foregoing material misrepresentations, omissions and concealments by
17 Saito were made intentionally, recklessly, and/or with knowledge of their falsity, and with the
18 intention that Sunstone would rely and act on them.

19 4.4 Sunstone acted in reasonable reliance on Saito's misrepresentations, acts and
20 omissions to its detriment.
21

22 4.5 As a direct and proximate result of Saito's fraudulent misrepresentations and
23 omissions, she is liable to Sunstone for compensatory damages in an amount to be determined
24 at trial.
25

1 4.6 Saito is indebted to Plaintiff for money and property obtained by false
2 pretenses, false representations and actual fraud.

3 **MONEY OBTAINED BY FRAUD OR DEFALCATION WHILE ACTING IN A**
4 **FIDUCIARY CAPACITY, EMBEZZLEMENT. 11 USC 523(a)(4)**
5

6 4.7 Plaintiff restates and realleges the allegations stated above as if fully set forth
7 herein.

8 4.8 Pursuant to Section 523(a)(4) of the Bankruptcy Code, a debtor will not be
9 discharged for debts obtained by fraud or defalcation while acting in a fiduciary capacity or by
10 embezzlement.

11 4.9 The foregoing material misrepresentations, omissions and concealments by
12 Saito were made intentionally, recklessly, and/or with knowledge of their falsity, and with the
13 intention that Saito would rely and act on them while she was Sunstone's real estate agent.
14

15 4.10 Saito's status as Sunstone's agent imparted upon her fiduciary duties, which
16 she violated.

17 4.11 Saito was hired by Sunstone as a manager of the Dance Academy after the sale
18 closed. In that role, she concealed bank accounts and company revenue, and used funds from
19 those accounts to enrich herself and/or embezzle funds.
20

21 4.12 As a direct and proximate result of Saito's fraudulent misrepresentations and
22 omissions and breach of her fiduciary duties, she is liable to Sunstone for compensatory
23 damages in an amount to be determined at trial.
24
25

1 4.13 Saito is indebted to Plaintiff for money and property obtained by false
2 pretenses, false representations and actual fraud perpetrated by reason of her breach of her
3 fiduciary duties

4 **MONEY OBTAINED IN VIOLATION OF THE WASHINGTON STATE**

5 **SECURITIES ACT AND BY COMMON LAW FRAUD**

6
7 4.14 Plaintiff restates and realleges the allegations stated above as if fully set forth
8 herein.

9 4.15 Pursuant to Section 523(a)(19) of the Bankruptcy Code, a debtor will not be
10 discharged for debts obtained by violation of any state securities law or any common law
11 fraud or deceit in connection with the sale of any security.

12 4.16 Saito's conduct violated the Washington State Securities Act, RCW 21.20.010
13 et seq. ("WSSA"), by engaging in a fraudulent practice in connection with the sale of a
14 security – the membership units of Sea-An, LLC. Accordingly, Saito is liable to Sunstone
15 under RCW 21.20.430 in an amount to be proven at trial, plus prejudgment interest, and
16 attorneys' fees and costs.

17
18 4.17 Saito is indebted to Sunstone for money obtained in violation of WSSA and
19 fraud and deceit with regards to the sale of securities.

20 **V. RELIEF REQUESTED**

21
22 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

23 5.1 For an Order declaring that Saito's debts owed to Sunstone be deemed non-
24 dischargeable;

